

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON AGRICULTURE

Call to Order: By **CHAIRMAN DONALD L. HEDGES**, on January 23, 2001
at 3:00 P.M., in Room 172 Capitol.

ROLL CALL

Members Present:

Rep. Donald L. Hedges, Chairman (R)
Rep. Linda Holden, Vice Chairman (R)
Rep. Ralph Lenhart, Vice Chairman (D)
Rep. Darrel Adams (R)
Rep. Gilda Clancy (R)
Rep. Dave Gallik (D)
Rep. Kathleen Galvin-Halcro (D)
Rep. Christopher Harris (D)
Rep. Verdell Jackson (R)
Rep. Jim Keane (D)
Rep. Larry Lehman (R)
Rep. Holly Raser (D)
Rep. Clarice Schrupf (R)
Rep. Butch Waddill (R)
Rep. Karl Waitschies (R)
Rep. Merlin Wolery (R)

Members Excused: Rep. Norma Bixby (D)
Rep. Rick Dale (R)
Rep. Frank Smith (D)

Members Absent: None.

Staff Present: Krista Lee Evans, Legislative Branch
Robyn Lund, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted:
Executive Action: HB 280

Discussion:

{Tape : 1; Side : A; Approx. Time Counter : 2.3}

REPRESENTATIVE VERDELL JACKSON asked for a brief summary on HB 280 and where the committee was at the end of the hearing, he believed they were discussing the constitutionality of the bill.

REPRESENTATIVE DONALD HEDGES replied that the constitution reads that no such land or any estate or interest therein shall ever be disposed of except in pursuance of general laws providing for such disposition or until the full market value of the estate or interest is disposed of to be ascertained in such manner as may be provided by law. An easement does transfer the power to the grantee, therefore you are transferring some management responsibility of the land, if not the physical property. The DNRC has litigated in this area a number of times, the most recent was in 1999 in reference to the historic easement bill of 1995. The legislature said that the Board of Land Management shall take into consideration the value added to state land. The court said that the word "shall" could not be used and overturned the legislation. The proposed bill says "may." The constitutional convention was very concerned with giving the Board of Land Management some flexibility in that area. The minutes of the constitutional convention say, this proposal expresses the committee's view to the best constitutional method of serving public interest, granting powers, and providing for needed flexibility. The merits for such action are the success of the present system and the need for flexibility. Further in the committee minutes it states that the committee agrees with the intent of this resolution to provide flexibility in the management of public land. **Rep. Hedges** said that he would submit to the committee that they were talking about striking out the land classes, such as agriculture land, grazing land, et cetera; now we just have state land.

REP. JACKSON asked, of Bud Clinch, depending on who is involved, a private individual, government agency, nonprofit, ect., the all have to play by the same rule, which is full market value; is that correct? **Bud Clinch, DNRC**, said that was correct. There are currently a variety of leases on the landscape to all types of parties for a wide variety of things. Common to all of those is the assessment of full market value. **REP. JACKSON** then asked about Mr. Clinch's previous testimony where he had talked about ways to get full market value, but still minimize cost, other than proving that the project would improve the value of the parcel and restricting activity through a narrow easement, are there any other ways to minimize cost? **Mr. Clinch** said that as he understood the reason for this bill, the concern of those leasing state land that have need to do activities on the land,

the perception that they need to get an easement to do those activities; he stated that that idea is not correct. The DNRC can authorize a wide variety of activities on state land if those activities enhance state land. However, if there is any benefit to land, other than state land, then it would be required to get either an authorization or an easement. In situation like this, usually the person wants to have an easement because that would be a transfer of rights. Absent an easement, if the land transfers to somebody other than the state that person would not have any rights to whatever investment was on that land. The other issue that had come up was the Dry Prairie Water System which is going to put in 3000 miles of pipeline in the northeastern part of the state. Of those 3000 miles, approximately 200 miles of that is expected to be across state land. They are concerned about being able to get relief from not having to purchase an easement. He reminded the committee that they are only talking about 200 miles of the 3000 miles, at a cost of \$80,000 of a \$200,000,000 project. He also said that that particular project has been through the DNRC, through the budgeting process, and for the second year in a row they have received a general fund appropriation to help them with the project. Last week they were granted \$100,000 to help. The legislature has in the past granted money to this group to help them, he believes that they could probably get the \$80,000 for an easement. Mr. Clinch also wanted to say that he had visited with the people involved in the project to try and explain to them the flexibility that the DNRC has within the framework of full market value. He explained that a very narrow easement could be granted, such as possibly four feet. He would be able to authorize a construction license in a much wider zone than the actual easement. This would greatly reduce the cost. He also would try to request hook ups to the pipeline on state land that may help offset the cost of the easement. He asked that the committee think about all the other things that may come up if this bill passes. The DNRC is obligated and able to make full market value for this land. **REP. JACKSON** said that he would like to know the different ways that you can arrive at full market value, other than the comparative sales approach. **Mr. Clinch** said that there are a variety of ways, but that it is somewhat dictated by the specific activity that you are contemplating because it is influenced by the competitive market. If there is not a competitive nature then you fall back to the concept of comparable sales. In an instance like we are talking about, they would look at recent comparable sales of like property in that county.

REPRESENTATIVE CHRISTOPHER HARRIS asked if Mr. Clinch had sought an attorney general's opinion on the constitutionality of this bill as currently written. **Mr. Clinch** said that he had not, and

that was not something that was typically done because it would usually take at least 6 months to get that opinion. However, there is a 1967 attorney general's opinion on a similar full market value concept. The bill attempted to set in process where natural areas could be established and lands set aside for unique purposes for no cost; subsequently the Montana attorney general ruled against that, and specifically went back to the enabling act position about full market value. **REP. HARRIS** asked if the import of the attorney general's opinion was that it could not be set aside for free. **Mr. Clinch** said that was correct, and he believes that it not only cited the very same enabling act language and the constitutional language, it went on to say that full market value can only be received by cash. Sometimes people try to say that full market value can be achieved because of the ascetic values and other appreciative things associated with that. The full market value interpretation, so far, is what has prevented that avenue from being opened. **REP. HARRIS** the said that he thought there were some constitutional questions about this bill, but he wanted to figure out a way to pull it together so that it could be saved. Can we provide in this bill that the board must receive full market value, but take into account the enhanced value that the improvements actually add. Has the DNRC considered that balancing act? **Mr. Clinch** replied that they had not because they all ready believe there is flexibility to do that. The key to that is to attach the improvement to the state land because there is a wide variety of activities that people will allege creates an improvement.

REPRESENTATIVE MERLIN WOLERY asked if Mr. Clinch could state for the record that he could give a four foot easement to Dry Prairie if they requested it. **Mr. Clinch** replied that he believed he could; the only reason he would hesitate is that he thinks there will probably be certain portions of that pipeline where there might be pumping stations, and that area may need to be larger in isolated situations. He said that the DNRC has the authority and discretion to authorize a minimal width right of way for an applicant.

REPRESENTATIVE DARREL ADAMS asked if Mr. Clinch knew the diameter of the pipeline. **Mr. Clinch** believed that at the largest point it was about 24 inches, but that, depending on where you look, it would vary on the different segments.

REPRESENTATIVE JIM KEANE asked if the Dry Prairie Rural Water had been to the DNRC to request any easements. **Mr. Clinch** replied that they had not. He believes that the project is still a couple years away from that stage, they are still at the preliminary stages of trying to get authorization and funding.

REPRESENTATIVE KARL WAITSCHIES asked that, if they do get a four foot easement, do they have the right to maintain the line driving a vehicle wider than four feet over the easement.

Mr. Clinch said that they have plenty of flexibility to authorize the maintenance under other aspects as well. They could issue a 40 year licence for a much wider maintenance corridor that doesn't transfer title to the ground. He believes that they could work together to come up with something that would work for everyone and that would have a minimal cost.

REP. HEDGES asked about a sewer system on the edge of Helena that Mr. Crowley had testified as to the installation of the sewer system on state land. He asked if Mr. Clinch was familiar with the details of that installation. **Mr. Clinch** replied that he had gone and inquired about that after the hearing. He stated that it was a totally private entity, and what is really at play here is the individual that appeared before the committee developed a subdivision. As part of that subdivision he developed the associated waste water treatment. He has some of his remaining land that he is wishing to develop, and since that is directly adjacent to state land he wanted to implement another historical statute that is believed to be unconstitutional, which in his mind would authorize any sewer district to utilize state lands for that. The fact of the matter is, that individual is trying to save from having to utilize his own valuable land for the sewer and put his sewer system onto the adjacent state land so that he can maximize the number of half acre lots that he can sell. The issue is that, not only does the DNRC not want to give him a free easement allowing him to put his private sewer system on state land, but the DNRC may want to capture the full market value by developing that land as well. They feel that it would be an incredible breach of trust to the fiduciaries if they started accepting everyone else's waste treatment plants so that a private individual can maximize the revenue generation off of their private land.

{Tape : 1; Side : A; Approx. Time Counter : 34}

REP. JACKSON stated that he wanted the DNRC to be able to keep their present flexibility. If we put some of that flexibility into the bill, is that a help or a hindrance. **Mr. Clinch** said that he would need to see the specific language and have legal staff review it before he could respond. He said that often people, including the courts, have different interpretations of legislature. **REP. JACKSON** said that the danger of doing that would be that where they have the flexibility now working off of general principles and then the committee is specific in a particular part of it, then they can apply that to other areas. Being too specific can be limiting. **Mr. Clinch** concurred with

REP. JACKSON, and he reminded the committee to view their actions in a broader perspective than just the one or two situations that have been presented. The DNRC issues 120 easements per year; he stated that we want to be careful as we craft or modify as the unintended consequences. He said that the committee needs to be careful because what the committee does could have an effect on all of those easements.

EXECUTIVE ACTION ON HB 280

Motion: REP. GALLIK moved that HB 280 DO PASS.

Discussion:

REP. GALLIK spoke to the motion. He stated that this is a great idea to try to make a statement for northeastern Montana that they should be able to get water to their property, they should be able to use that in a good manner to leverage the federal dollars that are there. That is a statement that this committee can make. This is a great economic development tool for northeast Montana. However, that being said, he urged the committee to vote against it. The reason being that it is obviously unconstitutional. He stated that we, as good stewards of the state, ought to recognize that, and that if we do pass it we will probably incur money for this state in litigation. He also urged that there be an amendment to HB 280 that would be to spend some money. If we can leverage that kind of federal money to get help to those people, then that is the right expenditure of money. That is a good statement. He urged the committee to vote against HB 280.

REPRESENTATIVE LARRY LEHMAN stated that he also opposed the bill, not only for its unconstitutionality. He reminded the committee that in a 10 year period, if this project gets off the ground, it's a \$200,000,000 project. The cost for the easements is \$80,000. He can't imagine passing a bill that may be unconstitutional for \$80,000. He stated that it does not make sense and urged the committee to vote against it.

REP. KEANE also had the concern about the unconstitutionality of the bill, and opposes it on that ground. He stated that one good thing in the bill being brought before the committee is that we have Mr. Clinch on record bringing forth several solutions to help with this project, and saying that he supports the project.

REP. HARRIS also shares the concerns about the constitutionality of the bill, but he would like to do whatever he can to save it. He has a conceptual amendment that may meet that objective. He

proposed an amendment that would delete on line 16, page 1, the words, "at no cost or reduced cost." He would make easements plural. At the end of that sentence, the word property, provided the board receives full market value for such easements, taking in to account the enhanced value provided by such development. That is the extent of the amendment. He stated that the reason he thinks that works is because we reintroduce fair market value as the operating concept, but we give the board the extra flexibility because there will be a charge for the easement, it might be less than normal, but the easement actually adds value to the property. He feels that would meet the constitutional test.

REP. KEANE wanted to bring up the point that in line 4, if you take the other things out, you need to take out the reduced cost easement in line four.

REP. JACKSON said that the danger in this is the things that you leave out. If we leave the first part in there, lines 11 - 14, he assumes that is what we have to live by. The DNRC has all of these things that minimizes the cost, and he believes that full market value and minimum costs are compatible. He would be afraid of the amendment because of the unintended consequences actually limiting what we can do.

REPRESENTATIVE HOLLY RASER agreed that if we put in the things that we can grant easements for, then anything that comes up that's not within there that we might say is valuable, then we couldn't do. Another conceptual amendment she offered was to keep lines 15 - 17 through the word property and then striking at no or reduced cost. This way we would not be stating what the infrastructures are that would be allowed, but it is adding in the idea that it is upgrading effected state land. **Ms. Evans** replied that Ms. Raser was saying that you can only grant easements that increase or upgrade the value of the state land, what if it doesn't do that, but it is for a really good project. The law of unintended consequences could be huge on making amendments that you don't have time to think about.

REP. WAITSCHIES spoke to the bill. He stated that without considering the amendments, which we don't have time to look at, he thinks that we are missing the boat. What this bill is trying to do is give a break to services that the public needs and wants, without which the state land would be worthless. This bill is asking to grant the board the right to use mitigating circumstances for payment of the easements.

REPRESENTATIVE RALPH LENHART said that HB 280 shows great promise. As far as concerns about the bill being

unconstitutional, he think that we may be able to fix it with amendments. He wants to see us fix it; he wants to see this bill come out of committee and go on the house floor and pass with little opposition. He thinks that we can do that. This bill is economic development, this is a huge project. He supports the bill, but would be more comfortable with some amendments to make things a little clearer.

REP. GALLIK thinks that we need to help this water project go through. However, he is concerned about the conceptual amendments because he thinks that one of the unintended consequences is going to be litigation over what is an upgrade, whether it is enhanced. He thinks we should scrap the bill with the understanding that we will come back with a committee bill that gives specifically \$80,000 to make the Dry Prairie Rural Water System go. That way there are not any unintentional consequences down the road.

REP. ADAMS asked, of **REP. HEDGES**, if this one pipeline project was really the motivation for the bill. **REP. HEDGES** said not necessarily. The state of Montana, in their constitution, set up a land board, which consists of the trustees of 5.5 million acres of land. They have quite well in the returns to the school trust utilizing limited management power. At the constitutional convention they said that they wanted to build into the system a certain flexibility, knowing that we have the top elected officers as the board of directors. The only thing they really wanted to do is say that you can't sell the land, if you sell it you have to have something of equal value that you put back into the trust. He gave an example of a cabin site, asking what's the value of that cabin site in its raw form versus if there was a water system, a sewer system, a boat dock and a road; infrastructure. He feels that the board could make more money for the state with the improved property.

REP. GALLIK asked how much time was needed to come up with the amendments. **Ms. Evans** replied that she felt it could be done by the following Thursday.

Motion/Vote: **REP. JACKSON** moved **TO TABLE HB 280. Motion carried 16-1 with Wolery voting no.**

Discussion on HB 246:

REP. RASER asked that the committee consider a committee bill in reference to HB 246. One of the concerns voiced in earlier discussions was that there was nothing in statute that addressed

the relationship between vehicles and livestock on roadways, not primary highways and interstates. It seems like that is something in law that should be addresses. She moved that we create a committee bill that would address that relationship and create something to fill those holes.

REPRESENTATIVE GILDA CLANCY asked if REP. RASER could explain what Greg Petesch had said.

REP. RASER said that from what she understood is that there is nothing in the statutes that covers the relationship between livestock and motorist, both have the right to be on roadways. There is nothing that talks about the relationship between them. He had said that within the bill as drafted we couldn't address it.

Ms. Evans said that the relationship that REP. RASER was talking to was with fences, where the relationship in statute right now is between land owner and land owner, or livestock owner and livestock owner, not livestock owner and motorist. That relationship with the fencing issue doesn't fit within the title of HB 246. The liability relationship is what is addressed in the bill, as is currently drafted, is immunity.

REP. GALLIK opposed the motion for a committee bill because he feels that at this point in time we need to get through the bill that we have before us and not muddy the waters any further. He thinks that we should take one step at a time.

REP. CLANCY agrees with REP. GALLIK's suggestion. She thinks that we need to see how the bill is passed through the committee and then go from there.

REP. HARRIS suggested another committee bill. He stated that HB 246 solves the liability problem, but it also creates another problem, which is when a motorist may incur some medical expenses and property damage through no fault of their own. He suggested that we mandate insurance. We already require liability insurance, we can expand on that and create what amounts to the open range or herd district endorsement, that would require motorists in Montana to have insurance that would cover expenses in a collision with livestock.

REP. RASER said that when she had talked to Krista about a committee bill, we wouldn't be muddying the waters by addressing it now, it would go to the bottom of her pile, so it would be well after HB 246 is addressed that it would come up. It is something that, since it's a problem, should be done in the session, but not before HB 246 is resolved.

REP. JACKSON wonders if we would be leaving the sponsor not knowing what he is doing to his bill. The sponsor has a couple of amendments coming, maybe he has already done it for us. He thinks that our first consideration should be what is the sponsor doing, and not do something that would be counterproductive.

REP. HEDGES stated that the sponsor needs full and fair warning of any amendments.

REP. HOLDEN said that there are good amendments coming and that this is an important bill. She thinks that we should wait until Thursday and not consider whether we are going to do a committee bill or anything until then.

REP. RASER withdrew the motion for a committee bill.

ADJOURNMENT

Adjournment: 4:30 P.M.

REP. DONALD L. HEDGES, Chairman

ROBYN LUND, Secretary

DH/RL

EXHIBIT (agh18aad)